

## Message Text

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43

ACTION SS-30

INFO OCT-01 ISO-00 SSO-00 /031 W  
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FM AMEMBASSY LUSAKA

TO SECSTATE WASHDC IMMEDIATE 9920

INFO AMEMBASSY PRETORIA IMMEDIATE

C O N F I D E N T I A L LUSAKA 0511

EXDIS

PASS OPIC

PRETORIA FOR AMBASSADOR WILKOWSKI ONLY

EO 11652: GDS

TAGS: EIND, ZA

SUBJECT: TAW

REF: STATE 49728

1. SUMMARY: TAW VICE PRESIDENT FRANK SAVAGE AND  
LAWYER JOSEPH BRIGATTI CALLED ON CHARGE MARCH 20 TO  
PROVIDE "HIGHLY CONFIDENTIAL" REPORT ON MEETING MARCH 19  
WITH GRZ. TAW REPS APPEAR CONSIDER THERE REASONABLE  
CHANCE FOR REINSTATEMENT CONTRACT BY MARCH 28 DEADLINE.  
FAILING THAT, THEY EXPRESS CONFIDENCE ABOUT RECEIVING, IN  
SUBSEQUENT ARBITRATION OR LITIGATION, VERY SUBSTANTIAL AWARD  
OF WELL OVER 20 MILLION DOLLARS IN DAMAGES. END SUMMARY.

2. ATTENDING MARCH 19 MEETING WERE MINISTER OF STATE  
AND SOLICITOR GENERAL MISS LOMBE CHIBESAKUNDA;  
SECRETARY TO CABINET PATRICK CHISANGA; SENIOR UNDER  
SECRETARY, MINISTRY OF POWER, TRANSPORT AND WORKS,  
MR. IKAFU; MINISTRY OF LEGAL AFFAIRS LAWYER, MR. CHAILA;  
NATIONAL TRANSPORT CORPORATION MANAGING DIRECTOR, SAMUEL  
KAFUMUKACHE; AND EXPATRIATE ADVISORS JAMES LORD  
(CHINCHILA FREIGHTLINERS, OPERATOR OF TAW TRUCKS); STUART  
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JONES AND ROBERT LITTLE (BOTH OF CABINET CONTINGENCY

COMMITTEE SECRETARIAT). ON TAW SIDE, BESIDES SAVAGE AND BRIGATTI, WERE LOCAL ZAMBIAN LAWYER SEBASTIAN ZULU AND RYDER ZAMBIA REP JACK TURNER. MEETING LASTED TWO HOURS; ALL PARTICIPANTS REMAINED UNTIL CONCLUSION EXCEPT CHISANGA, WHO LEFT HALF HOUR EARLY.

3. TAW REPS, WITH ZULU AS LEAD-OFF SPOKESMAN, SET FORTH IN PLAIN, UNEMOTIONAL LANGUAGE THEIR VIEW OF LEGAL SITUATION ALONG LINES OF REFTEL, PARA 4. THEY STATED THEY PREPARED CARRY OUT CONTRACT, PROVIDED GRZ AGREES PAY DAMAGES INCURRED DUE TO CANCELLATION LETTER ESTIMATED AT 1.6 MILLION DOLLARS. DEADLINE FOR DECISION IS MARCH 28, DATE IMPOSED NOT BY TAW BUT BY RYDER AND GM. AFTER THAT DATE, TAW REPS MADE "TOTALLY CLEAR," ONLY OPTION LEFT IS RESORT TO ARBITRATION IN LONDON OR REINSTATEMENT AT VASTLY HIGHER COST TO GRZ. IN CASE OF CANCELLATION, TAW CLAIM WOULD BE FOR 24 - 26 MILLION DOLLARS, FIGURE WHICH COULD BE FULLY DOCUMENTED. AS FAR AS TAW IS CONCERNED BALL IS IN GRZ COURT: IT MUST EITHER REINSTATE CONTRACT, PAYING MUTUALLY AGREED LEVEL OF DAMAGES, OR BE PREPARED FOR ARBITRATION. ZULU SUGGESTED GRZ WOULD FIND INTERNATIONAL MONEY MARKETS VERY RETICENT ABOUT ZAMBIA UNTIL ARBITRATION COMPLETE AND SETTLEMENT MADE. WITH BLESSING OF AUTHOR, SIWO LETTERS UNDERTAKING TO ACCEPT TRUCKS WHEN DELIVERED (PARA 6 AND 7 REFTEL) WERE IN FACT USED AS INDICATION GRZ INTENTIONS RE LEASE. TAW ALSO PREPARED CITE REPORT BY SIWO AND KAFUMUKACHE ON US TRIP LATE IN 1973 AS PROOF OF TAW'S GOOD FAITH AND OF FORCE MAJEURE CAUSING LATE DELIVERY.

4. GRZ POSITION DID NOT CHANGE DURING MEETING. CONTINUES BELIEVE TAW IN FUNDAMENTAL BREACH OF CONTRACT THRU LATE DELIVERY AND CANCELLATION THEREFORE ENTIRELY LEGAL. IN OPINION OF TAW REPS, SOLICITOR GENERAL CHIBESAKUNDA OBVIOUSLY UNDER INSTRUCTIONS NOT MOVE FROM THIS POSITION. THERE NEVERTHELESS WERE SIGNS OF WEAKNESS AND INDECISION ON ZAMBIAN SIDE. ONE PARTICIPANT COMMENTED "WE DO NOT KNOW WHETHER WE WANT TO TERMINATE." CHIBESAKUNDA ASKED WHETHER TAW HAD A PROPOSAL TO MAKE. (IT DOES NOT.) ANOTHER ZAMBIAN REP SPOKE OF CONFIDENTIAL

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SUSPENSION OF THE CONTRACT RATHER THAN CANCELLATION. GRZ REPS APPEARED STUNNED BY MAGNITUDE OF TAW DAMAGE FIGURE AND THEY WERE ATTENTIVE THROUGHOUT, TAKING COPIOUS NOTES. MEETING ENDED WITH AGREEMENT EACH SIDE HAD CLEARLY SET FORTH THEIR POSITIONS. NO ARRANGEMENT FOR OR EVEN MENTION OF POSSIBILITY OF FURTHER TALKS.

5. IN PROVIDING FOREGOING VERSION OF MEETING, SAVAGE AND BRIGATTI SHOWED COMPLETE CONFIDENCE IN STRENGTH OF THEIR POSITION. SAID VARIOUS INDICATIONS POINT TO MOVEMENT IN TAW'S FAVOR. ONE WELL-PLACED INDIVIDUAL "COMPLETELY OUTSIDE GOVERNMENT," "PURPORTEDLY" ACTING AS AGENT FOR MIN PLANNING AND FINANCE ALEXANDER CHIKWANDA, HAD CALLED AT TAW OFFICE SEVERAL TIMES POSING NUMEROUS QUESTIONS WHICH PRIMARILY REFLECTED MINISTER'S CONCERN OVER COST OF ARBITRATION TO GRZ. TRANSPORT SPECIALISTS, EVEN ZAMBIA-TANZANIA ROAD SERVICES, SAID TO BE STRONG SUPPORTERS OF TAW. SAVAGE BELIEVED KEY FIGURE, CHISANGA, LOSING SUPPORT FOR HIS OPPOSITION TO TAW. FIRST NEWSPAPER ACCOUNT OF TAW PROBLEMS, IN DAILY MAIL OF MARCH 20, SPOKE ONLY OF CONTRACT "SUSPENSION," NOT CANCELLATION, AND CITED "COMMENDABLE" WORK DONE THUS FAR BY TAW TRUCKS. TAW BELIEVES IT HAS EXCELLENT COUNTER TO THOSE WHO SAY LEASE TOO EXPENSIVE: DOCUMENTS SHOWING "USURIOUS" CONTINGENCY TRUCK LEASE ARRANGEMENT (MORE EXPENSIVE THAN TAW'S AND WITHOUT MAINTENANCE SERVICES) BETWEEN NTC AND ITS SUBSIDIARIES. TAW REPS ALSO OUTLINED THEIR ANSWER TO GRZ'S CLAIM TO DAMAGES: ONLY IF GRZ HAD BEEN CAPABLE OF USING TRUCKS COULD THEIR NONAVAILABILITY CAUSE DAMAGE. SINCE QUALIFIED DRIVERS WERE NOT AVAILABLE (GRZ HAVING NEGLECTED TO TRAIN THEM OR PROVIDE CANDIDATES TO TAW IN SUFFICIENT NUMBERS), TRUCKS WOULD HAVE REMAINED IDLE IF DELIVERED ON TIME.

6. TAW PRESIDENT TOM WOOD NOW IN LUSAKA. SAVAGE EXPECTS WOOD WILL MEET WITH PRESIDENT KAUNDA WEEKEND OF MARCH 23 - 24. WHEN CAUTIONED ABOUT DIFFICULTY ZAMBIANS HAVE IN MEETING DEADLINES, BRIGATTI SAID SIMPLE LETTER FROM GRZ REINSTATING CONTRACT AND AGREEING NEGOTIATE REASONABLE DAMAGES WOULD BE SUFFICIENT

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PERMIT TAW PROCEED WITH CONTRACT IMPLEMENTATION. SAVAGE AND BRIGATTI SHOWED NO INTEREST IN TRYING FIND MEANS EXTEND MARCH 28 DEADLINE. IF THERE NO PROGRESS OVER WEEKEND, THEY HAVE TENTATIVELY DECIDED ISSUE PRESS RELEASE, STATING TAW'S CASE IN STRAIGHTFORWARD FASHION.

7. BRIGATTI STRESSED TAW TAKING STRONG LINE NOW WHILE IT HAS NEGOTIATING STRENGTH WHICH IT WOULD NOT HAVE AFTER CONTRACT REINSTATEMENT.

8. SAVAGE, BACKED BY COOL AND CAPABLE APPEARING BRIGATTI, SEEMS NOW MUCH MORE CONFIDENT THAN IN FIRST WEEKS AFTER RECEIPT OF CANCELLATION LETTER. TAW CASE, AS THEY PRESENT IT, DOES INDEED APPEAR QUITE STRONG. WHETHER GRZ CAN BRING ITSELF TO REVERSE ITSELF, ESPECIALLY BETWEEN

NOW AND MARCH 28, VERY MUCH AN OPEN QUESTION.

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## Message Attributes

**Automatic DecapTIONing:** Z  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** TRUCKS, CONTRACTS, INDEMNIFICATION, LEASES  
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**Copy:** SINGLE  
**Draft Date:** 22 MAR 1974  
**DecapTION Date:** 28 MAY 2004  
**DecapTION Note:** 25 YEAR REVIEW  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GolinoFR  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
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**Enclosure:** n/a  
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**Review Comment:** n/a  
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**Review Date:** 24 JUN 2002  
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